IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.673 of 2006

1.Sathish Raj .. Petitioners

2.V.Rajendran

vs.

1.Atlanta Applied Dynamics (India) Pvt.Ltd. .. Respondents
174/A, II Main, AGS Layout
RMV 2nd Stage
Bangalore-560 094

2.M/s.Daily Life Retail and Trading
(India) Pvt. Ltd.
No.128, marshalls Road
Egmore,Chennai-600 008.

Revision Petition filed U/Art.227 of the Constitution of India against the order dated 25.1.2006, made in M.P.No.581/2005 in R.C.O.P.No.1443/2005 on the file of the XIV Small Causes Court, Chennai.

For Petitioners : Mr.M.S.Krishnan, for
M/s.Sarvabhauman Associates.

For Respondents : Mr.R.Thyagarajan

ORDER

This Revision Petition has been filed against the order dated 25.1.2006, made in M.P.No.581/2005 in R.C.O.P.No.1443/2005 on the file of the XIV Small Causes Court, Chennai.

2. The petitioners in RCOP No.1443/2005 on the file of the 14th Small Causes Court, Chennai are the revision petitioners.

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3. RCOP No.1443/2005 was filed by the revision petitioners against the respondents herein for an order of eviction under Sec.10 (2)(i) and 10 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act'). The respondents herein have filed a preliminary objection in the RCOP stating that there is a clause in the lease agreement dated 16.2.2004 stipulating that the dispute should be referred to arbitrator and already that clause was invoked by the revision petitioners before this court in C.S.No.416/2005 and this court appointed an arbitrator on 21.7.2005. It is further stated in the preliminary objections that arbitration proceedings are going on and the revision petitioners should not disturb their possession until an order is passed by the arbitrator as per the order of this court dated 21.7.2005. By filing these preliminary objections, the respondents prayed for dismissing the RCOP No.1443/2005 as not maintainable. The rent controller by order dated 25.1.2006 held that since the landlords and tenants opted for conciliation and arbitration, the landlords could not invoke the jurisdiction of the rent controller and consequently allowed M.P.No.581/2005 and dismissed the RCOP No.1443/2005 as not maintainable. Aggrieved by the order of Rent Controller, the above Revision Petition has been filed under Article 227 of the Constitution of India.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents. I have also gone through the documents filed and the judgments referred to by them in support of their submissions.

5. The learned counsel for the revision petitioners submitted that insofar as the question of eviction is concerned, the rent controller alone has got jurisdiction and in the arbitration proceedings, the question of eviction cannot be gone into and therefore, the RCOP is very much maintainable. He further submitted that even if there is a clause in the lease agreement referring the dispute to arbitration, the same is not valid insofar as the question of eviction is concerned and to that effect the agreement is not valid. He further submitted that between the two proceedings namely, the arbitration and rent control proceedings, the rent control proceedings are special proceedings and arbitration proceedings are only general proceedings and in such circumstances, the special proceedings will prevail over the general proceedings.

6. The learned counsel for the revision petitioners relied on the following decisions:

1) AIR 1991 S.C. 1094 (M/s.East India Corporation v. Shree Meenakshi Mills Ltd.)

2) 1996-1-L.W. 689 (Rukmani, P. v.R.Narayani and others)

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3) AIR 2000 Mad. 21 (A.Karuppiah v. B.Vaithianathan)-
for the proposition that the Rent Control Act has impliedly ousted the jurisdiction of the civil court insofar as the eviction of tenant is concerned.

7. He placed his reliance on the following decisions:

1) AIR 1966 S.C.135 (DAMJI v. L.I.C. OF INDIA)

2) AIR 1986 S.C. 1218 (M/s.General Radio & Appliances Co. Ltd. v. M.A.Khader)

3) AIR 1965 S.C. 920 (Official Receiver v. Abdul Shakoor)

4) AIR 2000 S.C. 1535 (Allahabad Bank v. Canara Bank)-
for the principle that when there is a special Act covering the particular field that alone is applicable and not the general Act.

8. The learned counsel drew support from the decisions reported in 1966-II-M.L.J. 63 (M/s.Raval & Co. v. Ramachandran), AIR 1974 S.C. 818 (Raval & Co. v. K.G.Ramachandran) and 1981(1) SCC 523 (Natraj Studios v. Navrang Studios) to contend that even if there is an agreement between the landlord and tenant to refer the dispute to arbitration, still the landlord can maintain the petition before the rent controller for eviction. The learned counsel for the revision petitioners further submitted that the arbitrator himself cannot decide the question of eviction as the Hon'ble Supreme Court has held that an award passed contrary to the substantive provisions of law would be patently illegal. He relied on the decision of the Hon'ble Supreme Court in 2006(4) SCC 445 (Hindustan Zinc Ltd. v. Friends Coal Carbonisation) in this regard.

9. Per contra, the learned counsel for the respondents submitted that as per clause 20 of the lease agreement executed on 16.2.2004, in the event of any dispute or difference arising out of the agreement, they shall try to resolve the same, failing which the matter shall be referred to an arbitrator. The learned counsel further submitted that the 1st respondent herein filed a suit in C.S.No.416/2005 before this court for a permanent injunction restraining the revision petitioners from interfering with their peaceful possession and enjoyment of the property and this court by order dated 27.4.2005 granted an interim injunction in O.A.No.478/2005 initially till 13.6.2005, which was later on extended by this court on 30.6.2005. At that time, the revision petitioners filed application No.2436/2005 under Sec.8 of the Arbitration Act, 1996 to dismiss the suit as not maintainable and refer the dispute to arbitration. This court by order dated 21.7.2005

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appointed Mr.S.Natarajan, District Judge as arbitrator and directed the parties to file their application before the arbitrator and till order is passed on interim arrangements the possession of the shop which is covered under the lease deed will not be disturbed. Therefore according to the learned counsel for the respondents that having approached this court for an appointment of an arbitrator they are now estopped from maintaining the rent control proceedings. He relied on the decision of the Hon'ble Supreme Court in 1999(5) SCC 651 (Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan) to submit that court includes an arbitrator and therefore the rent control proceedings could be maintained before the arbitrator.

10. I have considered the rival submissions carefully.

11. The issue involved in this case is whether rent control proceedings filed by the revision petitioners during the pendency of the arbitration proceedings are maintainable.

12. It is not in dispute that a lease agreement was executed by the parties on 16.2.2004. Clause 20 of the lease agreement reads as under:

> "20. The Lessors and Lessee hereby agree that in the event of any dispute or difference arising out of this lease agreement, they shall try to resolve the same by mutual discussions and conciliatory procedures, failing which the matter shall be referred to an arbitrator appointed by the Lessee and the same shall be subject to exclusive jurisdiction of Chennai city only and shall be conducted in accordance with the proceedings of the Arbitration and Conciliation Act, 1996."

13. A reading of clause 20 would make it very clear that failing conciliatory proceedings to resolve any dispute or differences arising out of the lease agreement, the matter shall be referred to arbitration. It is also not in dispute that dispute and differences arose resulting in the 1st respondent filing a suit before this court in C.S.No.416/2005.

14. In the plaint filed in C.S.No.416/2005 the respondents have stated that from January 2005, the revision petitioners after having purchased the entire complex started construction work in the 1st floor and throughout the building for alteration and demolition etc. Because of the construction work, nuisance was made with the intention demanding more advance amount by the revision petitioners and a threatening of forceful eviction was also alleged to have been made by the revision petitioners. It is further averred in the plaint that on

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16.4.2005, the revision petitioners abused the security of the 1st respondent and went to the extent of breaking open the lock, resulting in a police complaint given by them against the landlords/revision petitioners. They further stated in the plaint that pits were dug in front of their retail outlet under the guise of putting up new constitution and waste materials were dumped in front of the outlet causing hindrance and therefore they filed the above suit for permanent injunction.

15. The revision petitioners filed an application 2436/2005 under Sec.8 of the Arbitration Act, 1996 to dismiss the suit as not maintainable and refer the dispute to arbitration. In their affidavit filed in support of their application No.2436/2005, they have clearly stated in para 5 that all disputes between the petitioners and respondent except those covered under the Act, 1960 are to be settled only by arbitration. Therefore it is very clear that even at that time of filing the above application, the revision petitioners have clearly and categorically stated that disputes covered under the Act, 1960 could not be the subject matter before the arbitrator.

16. It is also not in dispute that an arbitrator has been appointed and the proceedings are going on before the arbitrator. Pending arbitration proceedings, the eviction petition has been filed by the revision petitioners in RCOP No.1443/2005 and the same was dismissed as not maintainable.

17. I am unable to accept the findings given by the rent controller to allow M.P.No.581/2005 by stating that since the landlords and tenants have opted conciliation, the landlords cannot invoke the jurisdiction of rent controller. Now it has been settled that civil court has no jurisdiction to try an eviction suit as Sec.10 of the Act, 1960 prohibits eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of Sec.10 or Sections 14 to 16 of the Act. If that being so, no petition for eviction can be maintained before the arbitrator also. Therefore the findings of the rent controller that she has no jurisdiction when there is a lease agreement containing a clause referring the matter to arbitration is vitiated and is liable to be set aside. Parties can enter into any contract containing clause for arbitration to refer any dispute for arbitration. But when there is a special Act covering the field of a particular dispute, the provisions of that Act alone have to be invoked and the dispute cannot be referred to any other mode of adjudication. Rent Control Proceedings are special proceedings insofar as the eviction of a tenant, fixation of fair rent of a building etc. are concerned and therefore that Act alone will cover the dispute in that field. Therefore I have no hesitation to hold that the rent control proceedings before the 14th Small Causes Court (Rent Controller) are very much maintainable and the same has to be continued by the parties despite the pending arbitration proceedings.

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18. Learned counsel for the respondents strenuously contended that having filed an application in Application No.2436/2005 in C.S.No.416/2005 for appointment of an arbitrator to refer the dispute as per clause 20 of the lease agreement and having got an order as prayed for, the revision petitioners are estopped from turning around from their earlier stand to contend that the eviction proceedings are maintainable before the rent controller only.

19. I am unable to accept the submissions of the learned counsel for the respondents. It is true that the revision petitioners filed an application No.2436/2005 under Sec.8 of the Act, 1996 to dismiss the suit as not maintainable and to refer the dispute to arbitration. But the revision petitioners have very clearly and categorically stated in their affidavit that all other disputes between the parties except those covered under the Act, 1960 are to be settled only by the arbitration. Therefore it cannot be said that the revision petitioners conceded before this court that the eviction issue could also be decided by the arbitration.

20. That apart assuming that the eviction issue is also decided by the arbitrator and in such circumstances if any award is passed for eviction by the arbitrator, whether the same will be binding and enforceable in the light of the specific provisions of the Act, 1960. The answer is only no as no tenant can be evicted except in accordance with the the Act, 1960, once the Act is notified to that particular area. Therefore no useful purpose would be served even if the issue of eviction is agreed to be referred to arbitration.

21. Learned counsel for the respondents finally argued that having entered into a lease agreement to settle the disputes by referring the same to arbitration, the revision petitioners are bound by the agreement only and they cannot wriggle out of the said lease agreement dated 16.2.2004.

22. I am unable to accept this submission also. Even though clause 20 of the lease agreement dated 16.2.2004 says that in the event of "any dispute or differences arising out of the lease agreement", any dispute or differences have to be understood as any dispute or difference other than the one contemplated under the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. Such a construction of the agreement alone would advance the cause of justice. Even otherwise parties by agreement cannot be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special authorities constituted by the Act, 1960. Therefore the arbitration agreement in clause 20 of the lease deed, even if it is construed that all disputes including eviction disputes also, the same cannot be recognised by this court to that extent.

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23. Learned counsel for the respondents then submitted that if the rent control proceedings are permitted to be proceeded with it would amount to going against the order of this court dated 21.7.2005 made in Application No.2436/2005.

24. I am unable to accept this submission also. This court appointed an arbitrator and directed the parties to file their application before him. This court has also granted liberty to the 1st respondent herein to make the grievance of removing the compound wall put up by the revision petitioners herein before the arbitrator. So it is very clear that the arbitration proceedings should continue to go on with regard to all the other issues like the digging of pit, putting up offending construction, interfering with the ingress and egress of the outlet etc. excepting the proceedings which are contemplated under the Act, 1960.

25. Therefore I am of the considered view that the rent controller has failed to exercise her jurisdiction by holding that in view of the lease agreement the jurisdiction of the rent controller is ousted. In fact, the revision petitioners cannot invoke any other jurisdiction other than the jurisdiction of the rent controller for filing an eviction petition against the respondents herein. Hence I have no hesitation in setting aside the order of the rent controller passed in M.P.No.581/2005 and also the consequent order passed in main RCOP itself. In view of the above, the rent controller is directed to take RCOP No.1443/2005 on file and to proceed with the same in accordance with law.

26. The learned counsel for the respondents pointed out that in the order of this court dated 21.7.2005 in Application No.2436/2005, this court directed that till order is passed on interim arrangement, the possession of the shop which is covered under the lease deed shall not be disturbed and submitted that this order should not be disturbed at all.

27. I find force in the submission of the learned counsel for the respondents. This court in its order dated 21.7.2005 ordered that till order is passed on interim arrangement, the possession of the shop shall not be disturbed. This order is still in force and admittedly no appeal has been filed by the revision petitioners against that portion of the order. Therefore the same is to be continued as ordered by this court. In view of the fact that revision petitioners have filed the eviction petition, I do not think that the revision petitioners would disturb the possession of the respondents till the rent control proceedings, which has been already initiated is finally disposed of.

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28. In the result, the C.R.P. is allowed. Consequently, C.M.P.Nos.6578/2006 and 8861/2006 are closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The xiv Judge,
Court of Small Causes,
Chennai.

2. The Registrar,
Court of Small Causes,
Chennai - 104.

3. The Record Keeper,
VR Section,
High Court,
Madras

+ 1 C.C. to M/S.Sarvabhauman Associates, SR No.49996

+ 1 C.C. to Mr.R.Thiagarajan, Advocate, SR No.50091

HPR(CO)
CGS(28/11/2006)

Pre-delivery order,
C.R.P.(PD)673/06.

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